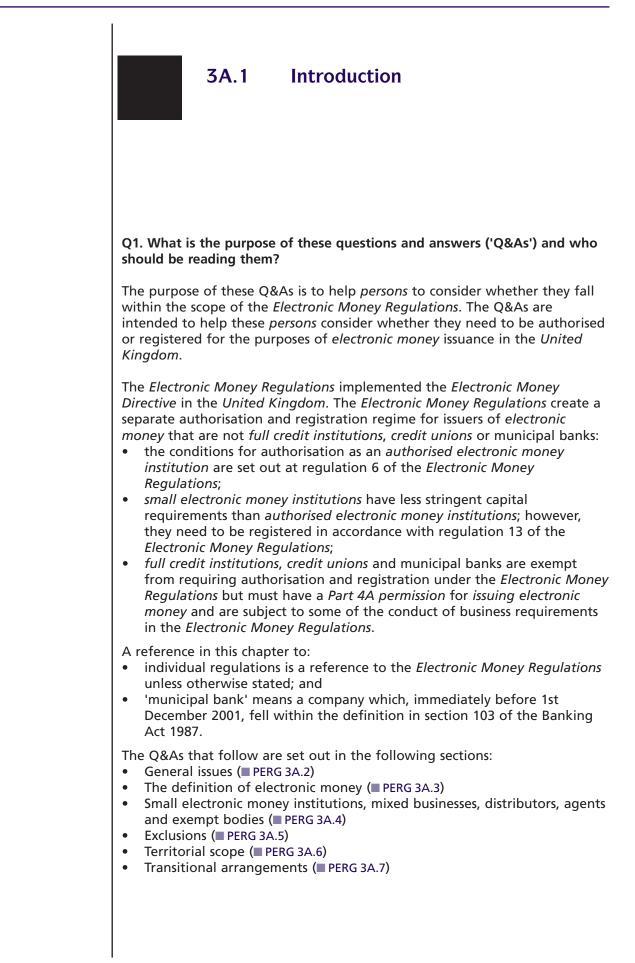
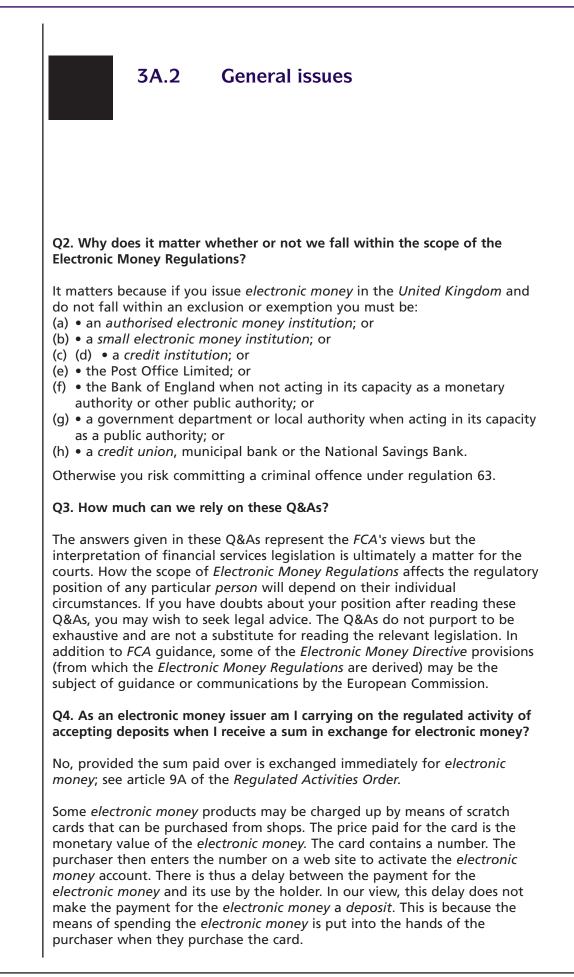
**The Perimeter Guidance Manual** 

## Chapter 3A

## Guidance on the scope of the Electronic Money Regulations 2011





## Q5. I intend to issue electronic money in the United Kingdom. How does the authorisation and registration process apply to me?

It depends on a number of factors:

- i) i) Unless you are a person falling within ii) to iv) below you must apply under the *Electronic Money Regulations* for either:
- • authorisation to be an *authorised electronic money institution* (see regulation 6 for the relevant conditions); or
- registration to be a *small electronic money institution* (see regulation 13).
- ii) ii) If you are a *credit union*, municipal bank or a *full credit institution*:
- • authorisation and variation of permission remains that imposed by Part 4A of the Act. This means you will need to have a separate Part 4A permission in order to issue electronic money;
- where you issue *electronic money* you will be subject to the provisions on issuance and redeemability of *electronic money* in the *Electronic Money Regulations*;
- • note that you may also be subject to the conduct of business requirements in the *Payment Services Regulations*.
- iii) iv) Government departments, local authorities, the Post Office Limited and the National Savings Bank cannot apply for authorisation or registration under the *Electronic Money Regulations* but they must give notice to the *FCA* if they issue or propose to issue *electronic money*.

Transitional arrangements may also be relevant, see PERG 3A.7.

### Q6. We are a payment institution. How will the Electronic Money Regulations apply to us?

If you are a *payment institution* that does not intend to issue *electronic money* or act as agent for an *electronic money institution* the *Electronic Money Regulations* are unlikely to apply to you.

If you are a *payment institution* that wishes to also issue *electronic money* then, in our view, you should cancel your authorisation or registration as a *payment institution* and apply to be an *electronic money institution*. An *electronic money institution* does not need to be authorised or registered under the *Payment Services Regulations* to provide *payment services*.

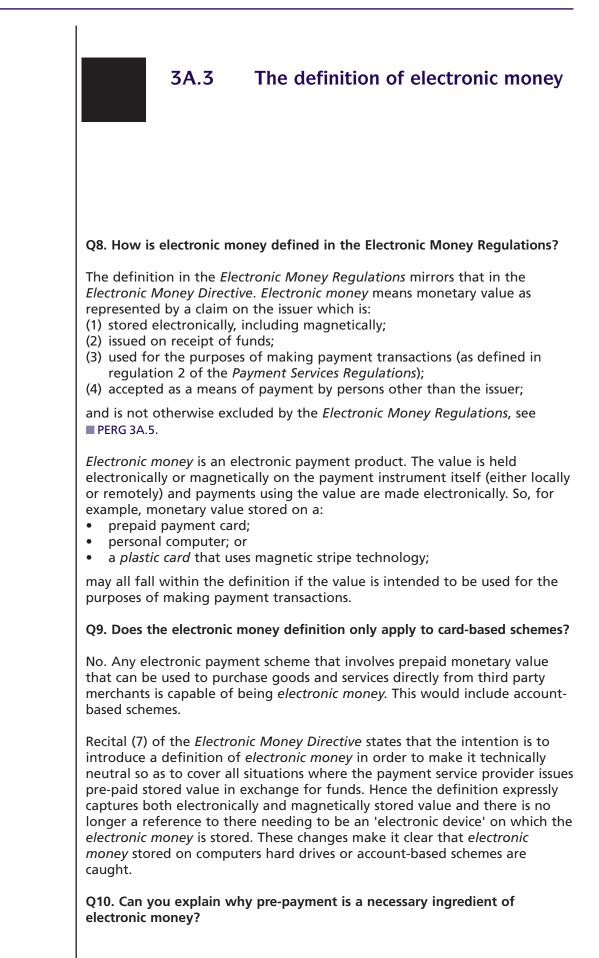
## Q7. As an electronic money institution how will the Payment Services Regulations apply to us?

The issuance of *electronic money* is not itself a *payment service* but it is likely to entail the provision of *payment services*. For example, issuing a *payment instrument* is a *payment service* and *electronic money* is likely to be issued on a *payment instrument* in order to make a payment transaction. See Q20 at ■ PERG 15 for more detail on what amounts to issuing *payment instruments*.

As an *electronic money institution* you are permitted to engage in the provision of *payment services* as well as other activities, see regulation 32 and Q19 below, without needing to be separately authorised or registered under the *Payment Services Regulations*.

The conduct of business requirements in Parts 6 and 7 of the *Payment* Services Regulations apply to electronic money issuers.

Transitional arrangements may also be relevant; see **PERG 3A.7**.



The definition of *electronic money* says that for a product to be *electronic money*, it must be issued on receipt of funds. This part of the definition means that *electronic money* is a prepaid product. That is, unlike credit provided through a credit card, the *customer* pays for the spending power in advance. This is why credit cards are excluded from the definition of *electronic money*. This does not mean that *electronic money* paid for with a credit card falls outside the definition. The purchase of the *electronic money* represents the purchase of monetary value. The fact that the purchaser is lent the funds to buy the *electronic money* does not affect this. There are two contracts, one for the *sale* of *electronic money* and one for credit.

Value on a debit card may be *electronic money* or a *deposit*. Guidance on this is given in Q15.

### Q11. Does it matter that the device on which electronic value is held may be used for other purposes?

No. The fact that the device on which monetary value is stored is made available, for example, on a *plastic card* that also functions as a debit or credit card or is a mobile phone does not stop that monetary value from being *electronic money*.

## Q12. Does it matter that the monetary value can be spent with the issuer and third parties?

No. If monetary value can be spent with third parties, it does not stop being *electronic money* just because the *electronic money* can also be spent with the issuer. This is so even if in practice most of the *electronic money* is spent with the issuer and only a small portion spent with third parties.

#### Q13. Are electronic travellers cheques electronic money?

An electronic travellers cheque is a product, based on a plastic card, designed to replace paper travellers cheques. There are two types of electronic travellers cheques:

- (1) ones that can also be used to buy goods and services from third parties; and
- (2) ones whose only function is to allow the holder to withdraw cash in a foreign currency from ATMs when abroad.

The plastic card is loaded with value, the holder pays for the value on issue and uses the value to purchase goods and services. It is likely then to meet the first three conditions in the definition of *electronic money* listed at Q8. The remaining condition is whether the value is accepted as a means of payment by persons other than the issuer.

An electronic travellers cheque falling into (1) above is likely to be *electronic money* as it can be used to purchase goods from third parties.

An electronic travellers cheque falling into (2) is unlikely to be *electronic money* provided that:

- it can only be used to withdraw foreign currency from ATMs owned by the issuer of the value; or
- the withdrawal of foreign currency by a cardholder will never involve the purchase of the currency from the owner of the ATM but instead the repayment of prepaid value by the issuer of the prepaid value.

Q14. If I use a trust account to store monetary value in respect of funds I have accepted payment for, will I be issuing electronic money?

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Putting monetary value into a trust account does not, of itself, prevent the *person* who accepts the payment for electronic value from issuing *electronic money*.

#### Q15. How does electronic money differ from deposits?

Recital (13) of the *Electronic Money Directive* provides that *electronic money* does not constitute a deposit-taking activity under the BCD "in view of its specific character as an electronic surrogate for coins and banknotes, which is used for making payments, usually of limited amount and not as a means of saving."

In distinguishing *electronic money* and *deposits*, relevant factors include the following:

- If the monetary value is kept on an account that can be used by nonelectronic means, that points towards it being a *deposit*. For example, an account on which cheques can be drawn is unlikely to be *electronic money*.
- If a product is designed in such a way that it is only likely to be used for making payments of limited amounts and not as a means of saving, that feature points towards it being *electronic money*. Relevant features might include how long value is allowed to remain on the account, disincentives to keeping value on the account and the payment of interest on it.
- One should have regard to whether the product is sold as *electronic money* or as a *deposit*.

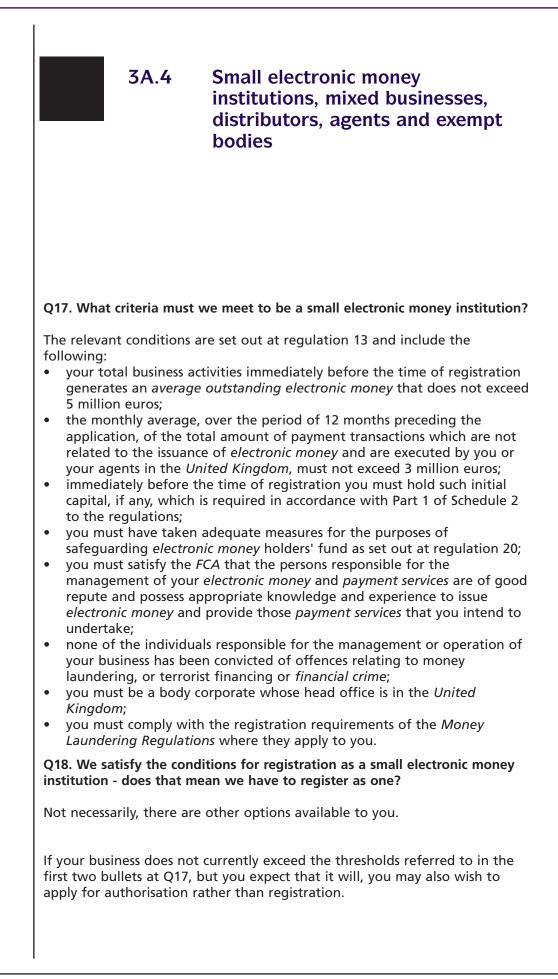
In other words, a *deposit* involves the creation of a debtor-creditor relationship under which the *person* who accepts the *deposit* stores value for eventual return. *Electronic money*, in contrast, involves the purchase of a means of payment.

### Q16. What sort of factors will the FCA take into account in deciding whether a particular scheme might be electronic money?

In considering this question relevant factors include:

- the risks incurred by the holder of the value;
- the nature of the rights and obligations of the holder of the prepaid value, the issuer of the value and third parties involved in the scheme; and
- what the scheme allows the holder of the value to do.

Therefore artificial features of a scheme that disguise, or try to disguise, the payment function as the supply of another sort of service are not likely to prevent the scheme from involving the issuance of *electronic money*.



Q19. We are a firm providing non-financial products and services to the general public. Would it be possible for us to obtain authorisation as an electronic money institution?

Yes. One of the changes made by the *Electronic Money Regulations* is to allow electronic money institutions to undertake mixed business. So, electronic money institutions may, in addition to issuing electronic money, engage in the following activities:

- the provision of *payment services*; and
- the provision of operational and closely related ancillary services, including ensuring the execution of payment transactions, foreign exchange services, safe-keeping activities and the storage and processing of data: and
- the operation of payment systems, as defined at regulation 2(1); and
- business activities other than the issuance of electronic money.

Q20. We are a branch of a firm which has its head office outside the UK. If we became an electronic money institution can we also engage in mixed business?

Yes, but you can only provide *payment services* that are linked to the issuance of *electronic money*. You cannot undertake any of the other payment services.

Q21. We act as agent for an electronic money institution. What is the scope of our activities under the regulations?

As such an agent you may provide *payment services* on behalf of your principal, but only if you are registered by them on the Financial Services Register. You may also distribute or redeem electronic money for your principal. You cannot however issue *electronic money* on their behalf.

#### Q22. We distribute and redeem electronic money. What is the scope of our activities under the regulations?

In some *electronic money* schemes an originator creates *electronic money* and then sells it to banks and other distributors. The latter then sell the electronic money to the public. In our view reference to the issuer of electronic money in the Electronic Money Regulations is a reference to the originator and not the distributor.

So, provided you are not:

- • issuing *electronic money* yourself; or
- acting as an agent for an electronic money institution, see Q21;

you do not need to be authorised or registered under the *Electronic Money* Regulations. However, the electronic money institution that is acting as your principal should notify the FCA that you are acting as a distributor, see regulations 26 and 37 and Schedule 1.

You should also bear in mind that if, in distributing and redeeming electronic money, your activities amount to payment services you will need to consider whether you are required to be authorised or registered under the *Payment Services Regulations*, see PERG 15 for further guidance.

Q23. We have been registered by one of our principals as an agent under the Payment Services Regulations. If we wish to act as agent for an electronic money institution as well will we need to be registered again?

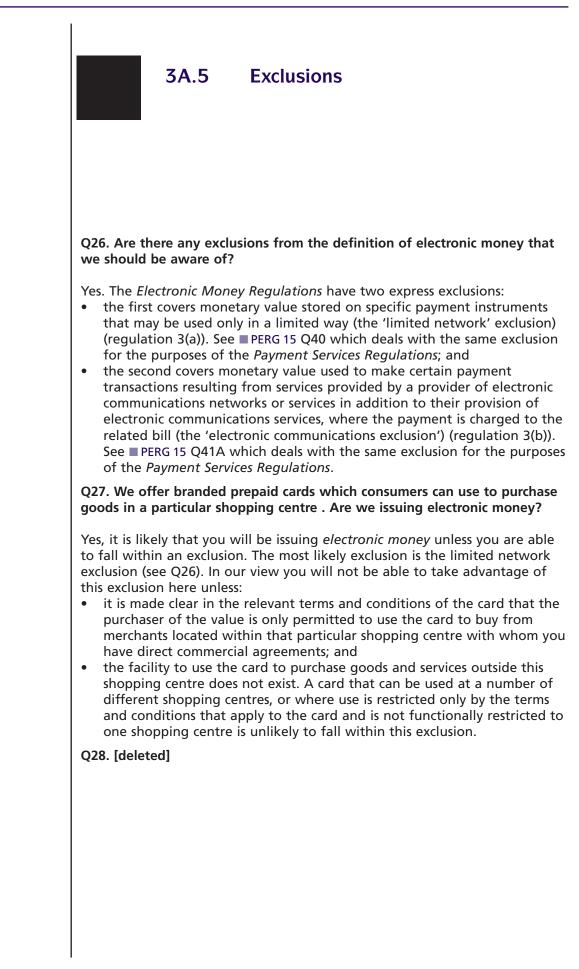
Yes. If your principal is an *electronic money institution*, it is its responsibility to apply for registration on your behalf even if you have been registered as agent under the *Payment Services Regulations*. You are required to be registered on the *Financial Services Register* before you provide *payment services* for your principal, subject to any relevant transitional provisions which may delay or avoid the need for registration.

#### Q24. We are a credit union. Are we exempt from the regulations?

Yes, in part. You are exempt from the authorisation and registration requirements in the regulations. However, if you wish to issue *electronic money* you must ensure you have the relevant *Part 4A permission*. You will also be subject to the safeguarding requirements in Part 3 and the redeemability provision in Part 5 of the *Electronic Money Regulations*.

#### Q25. We are a municipal bank. Are we exempt from the regulations?

Save that you are not subject to the safeguarding requirements in Part 3 of the regulations, your position is identical to that of *credit unions*, see Q24.



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